

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

GREGORY THOMAS BERRY, *et al.*

Plaintiffs,

Civil Action No. 3:11cv754

v.

LEXISNEXIS RISK & INFORMATION  
ANALYTICS GROUP, INC., *et al.*

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF CONSENT MOTION  
TO FILE AMENDED COMPLAINT**

COME NOW the Plaintiffs, Gregory Thomas Berry, Summer Darbonne, Rickey Millen, Shamoond Saeed, Arthur B. Hernandez, Erika A. Godfrey and Timothy Otten ("Plaintiffs"), individually and on behalf of all others similarly situated and in support of their Motion to Amend Complaint, they state:

The Parties have also moved to allow the filing of Plaintiffs' proposed Amended Complaint. (Exhibit "A"). By doing so, they focus the allegations on those claims that remain and are now the focus and basis of this action. Obviously, Plaintiffs also include an explicit statement of the basis for the injunctive relief to be obtained in this case. The Amended Complaint further removes allegations no longer at issue in the case and corrects the class definitions to conform to the time period addressed in settlement.

Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiffs asks for leave to file the proffered Amended Class Complaint. Defendants have consented. No party, and no class member, will be prejudiced by the amendment. Instead, the amendment simply adapts the existing set of allegations to more clearly state the nature of claims and remedies pursued in the case and now

settled on a class basis.<sup>1</sup>

The present motion is filed out of an abundance of caution, given the asserted objections. Plaintiffs are confident that the issue in dispute – whether or not the complaint explicitly identifies each available remedy sought – such as injunctive relief – is immaterial. Rule 54(c) states:

(c) Demand for Judgment; Relief to Be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

Fed. R. Civ. P. 54(c). Nevertheless and though no change is made to the relief actually pursued in the case since before filing, “A Rule 15(a) amendment also is appropriate for increasing the amount of damages sought, or for electing a different remedy than the one originally requested. Technically, these amendments are not necessary since Rule 54(c) provides that regardless of the formal demand for relief, “the final judgment should grant the relief to which each party is entitled ....” A party desiring to change the demand for relief may do so under Rule 15(a),

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<sup>1</sup> There are no prejudicial timing issues. The rights and interests of the Parties and the Class

Quite appropriately the courts have not imposed any arbitrary timing restrictions on requests for leave to amend and permission has been granted under Rule 15(a) at various stages of the litigation. These include: following discovery; after a pretrial conference; at a hearing on a motion to dismiss or for summary judgment; when the case is on the trial calendar and has been set for a hearing by the district court; at the beginning, during, and at the close of trial; after a judgment has been entered; and even on remand following an appeal.

The policy of allowing amendments to be made at any time during the litigation is sound. It would be unreasonable to restrict a party's ability to amend to a particular stage of the action inasmuch as the need to amend may not appear until after discovery has been completed or testimony has been taken at trial.

6 Fed. Prac. & Proc. Civ. § 1488 (3d ed.).

however.” 6 Fed. Prac. & Proc. Civ. § 1474 (3d ed.).

Plaintiffs’ motion is consistent with the procedures followed by class action parties and courts across the nation, including in this District and Division. *See e.g. Beverly v. Wal-Mart Stores, Inc. et al*, 3:07-cv-469 (E.D.V.A. May 1, 2009)(R. Williams)(Exhibit “B”).

Respectfully submitted,  
**PLAINTIFFS**

/s/

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**CERTIFICATE OF SERVICE**

I certify that on the 10th day of December, 2013, I electronically filed the foregoing Plaintiffs' Memorandum in Support of Motion to Amend Complaint with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I hereby certify that I have mailed by United States Postal Service the document to the non-CM/ECF participants:

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